



# PUBLIC SCHOOL OPEN ENROLLMENT INFORMATIONAL BULLETIN

Bulletin 14-02

February 2014

## Full-Time Public School Open Enrollment Appeals Information for School Districts (Respondents)

### DECISIONS THAT MAY BE APPEALED

Wis. Stats. § 118.51 (9) permits parents whose open enrollment applications have been denied to file an appeal with the Department of Public Instruction within 30 days after the application has been denied. The following decisions may be appealed to the Department:

#### *Nonresident School Board Decisions*

- A nonresident school board's denial of an application submitted during the regular (February to April) application period.
- A nonresident school board's determination that the special education or related services required in an individualized education program (IEP) developed or revised after the pupil begins attending the nonresident school district are not available in the nonresident school district, or there is not space to provide them.
- A nonresident school board's termination of open enrollment due to habitual truancy.
- A nonresident school board's termination of open enrollment in a virtual charter school for failure to participate.

#### *Resident School Board Decisions*

- A resident school board's denial of an application submitted during the regular application period based on the undue financial burden of the cost to provide the special education and related services to the pupil in the nonresident school district.
- A resident school board's denial of an application submitted under the alternative application procedure.
- A resident school board's determination that the cost to provide the special education and related services required in an IEP developed or revised after the pupil begins attending the nonresident school district, or there is no space to provide them.
- A resident school board's denial of an application submitted under the alternative application procedure.

### DECISIONS THAT MAY NOT BE APPEALED

The following decisions may not be appealed to the Department.

- A nonresident school board's denial of an application submitted under the alternative application procedure.
- A school assignment made by the nonresident school board.

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Open Enrollment Program  
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## REQUIREMENTS IN THE NOTICE OF DENIAL

The school board's notice of denial must be made in writing and must be sent (post-marked) or personally delivered to the parent on or before the deadline specified in statute, if there is one. A late denial is considered an approval.

The denial notice must include:

- All of the reasons for denial. A school board will be permitted to defend on appeal only those reasons that were included in the notice. For example, if a nonresident school board denied an application because space is not available, the board may not argue in the appeal that the pupil has been habitually truant from the district.
- Notice of the parent's right to file an appeal with the state superintendent within 30 days of the date the decision is postmarked or personally delivered to the parent, including the following:
  - The department's address to which the appeal must be sent.
  - Where the parent may obtain other information about filing an appeal.

Note: PI 9418 Form for Filing an Open Enrollment Appeal may be obtained free of charge from the Department at P.O. Box 7841, Madison, WI 53707, or by contacting the Department at 888-245-2732 or [openenrollment@dpi.wi.gov](mailto:openenrollment@dpi.wi.gov) or from the open enrollment web site at <http://oe.dpi.wi.gov>.

Failure to notify the parent of the right to appeal will not result in an automatic overturn of the school board's decision, however, the Department may accept an appeal as long as the appeal is filed 30 days after the parent finds out that the denial may be appealed.

## REQUIREMENTS FOR FILING AN APPEAL

An appeal must be in writing and must be signed. It may be filed using the DPI's appeal form<sup>1</sup> or in the form of a letter or brief. The appeal must include all of the following:

- A copy of the notice of denial.
- A copy of the postmarked envelope in which the notice of denial was mailed and any other information that came with the notice. (If the parent does not have the envelope, the appellant may still file the appeal; however, it may delay processing the appeal while the DPI contacts the school district to find out when the notice was mailed.)
- A statement of the decision being appealed. For example: "This is an appeal of the ABC School Board's denial of open enrollment for Johnny Brown to transfer to the ABC School District from the DEF School District."
- A statement of the reasons for the appeal, including why the appellant believes the decision was arbitrary or unreasonable, as it relates to the reason for denial. For example, if the application was denied due to space, the appellant must explain why the appellant believes the board was arbitrary or unreasonable (i.e. wrong) when it determined it did not have space.<sup>2</sup>
- Any other facts or evidence the parent believes are relevant to the appeal.
- If the appellant is represented by legal counsel, a notice of representation must be enclosed.

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<sup>1</sup> You may obtain form PI 9418 from the open enrollment web site at <http://oe.dpi.wi.gov>, or you may write to the DPI, Attn: Open Enrollment Program, P.O. Box 7841, Madison WI 53707, or you may call or email to 888-245-2732 or [openenrollment@dpi.wi.gov](mailto:openenrollment@dpi.wi.gov).

<sup>2</sup> An open enrollment appeal is not the venue to review problems you are having in your resident school district.

If the appeal is missing any required information, or does not allege the decision was arbitrary or unreasonable as it relates to the reason for denial, we will send a letter to the appellant explaining the deficiency and provide an opportunity for the appellant to correct it. If the appellant does not do so, we will not process the appeal.

If the appellant's only reason for filing the appeal is not related to the reason the application was denied, the appellant will be given an opportunity to provide additional explanation. Unless the appeal is of a resident school board's denial of an alternative application due to "best interests of the pupil," the appellant's reasons for applying for open enrollment will not be considered in reviewing the appeal.

If the appeal is postmarked more than 30 days from the date the denial was postmarked, it is untimely and the Department does not have jurisdiction to review the decision. If the appellant does not provide a copy of the postmarked envelope, the Department will contact the school board for proof of mailing to determine timeliness before proceeding to process the appeal.

It is not required for either the appellant or the school board to be represented by counsel. No specific legal format is required for filing an appeal, for submitting evidence or briefs, or for responding to an appeal. However, the Department is prohibited from providing legal assistance to either party so if a party needs legal assistance, it may be desirable to consult an attorney.

The Department may not engage in any ex parte communication with either party. This means the Department will not discuss the specifics of an appeal with either party, although the Department will provide whatever procedural information a party needs.

The appeal and all information concerning the appeal should be sent to:

Open Enrollment Program  
Department of Public Instruction  
P.O. Box 7841  
Madison, WI 53707

Alternatively, the appeal may be scanned and emailed to [openenrollment@dpi.wi.gov](mailto:openenrollment@dpi.wi.gov) or faxed to 608-267-9207.

## **PROCESSING APPEALS**

Upon receipt of the appeal, the Department will write to the school board and the appellant. The letter will notify the school board that the appeal has been received, will acknowledge receipt of the appeal to the appellant and will instruction the school board to provide the record of the decision and will set a schedule for submission of the record and filing of briefs.

### *Record*

The record of the decision always includes the following:

- Copies of the application, the notice of denial and any information that accompanied the notice of denial.
- Proof of mailing.
- A copy of the school board's policy and any other relevant policies (see appendix).
- Administrative procedures used to determine approval or denial, including an explanation of the specific reasons for the decision.
- Minutes, tapes or transcripts of any school board meetings at which criteria or spaces were set or decisions made and a copy of all relevant materials provided to the school board.
- Minutes, tapes or transcripts of any committee meetings at which decisions were made.
- A copy of all information and data used in setting criteria or acting on the application (see appendix).

- Any other facts relevant to the appeal.

An appendix to this bulletin provides a detailed list of materials that must be submitted based on the reason for denial.

### *Briefs*

Although neither party is required to submit a brief, either party may do so. The Department will establish a schedule for submission of briefs and replies. The school board's initial brief is due on the same date as the record of the decision.

A brief is the party's argument in the appeal. It generally includes a statement of the facts of the case, followed by an argument explaining why the party believes the decision should be made in the party's favor, and includes facts, evidence and rationale to support the party's case.

There is no required format for the brief. It may be as simple as a letter or as formal as a "legal brief" submitted by an attorney.

### *Schedule*

- The record of the decision and the school board's initial brief will be due two weeks after the Department's letter.
- The appellant's reply brief, if any, will be due 10 days after the record is due.
- The school board's reply brief, if any, will be due 7 days after the appellant's brief is due.

## **REVIEW OF THE RECORD AND BRIEFS**

The Department is required to affirm a school board's decision unless the Department finds that the decision was arbitrary or unreasonable.\* This means if a school board's policies and criteria are in compliance with state law and are neither arbitrary nor unreasonable, if the school board properly and consistently applied its policy and criteria and followed state law and its policies in determining which applications will be approved and denied, the decision is likely to be affirmed.

The Department will use any of the following procedures it determines to be appropriate in the appeal process:

- Provide technical assistance and attempt to resolve the matter informally.
- Conduct an investigation, including an on-site review or any other activity the Department deems is appropriate.
- Issue a decision based on a review of the record of the school board, arguments from the parties and any other matter the Department deems appropriate.

## **DECISION**

The Department's decision will be in writing and will state separate findings of fact and conclusions of law. The decision will be mailed by first class mail to the school board and to the appellant at the address stated on the appeal.

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\* If the appeal is of a resident school board's determination that an alternative application is not in the best interests of the pupil, the Department must overturn the school board's decision if the Department determines that the denial is not in the pupil's best interests

## APPENDIX

In addition to the elements of a record that apply to all appeals (see section on Processing Appeals, above), there are elements that are specific to the reason for denial. Following is a list of the additional information and data required from the school district based on the reason for denial.

Note: If the school board is represented by counsel, a notice of representation should be enclosed with the record and brief.

### *Regular Education Space Not Available – Nonresident School Board*

- Criteria, data and procedures used to determine space availability, including any class size limits or pupil-teacher ratios, building capacity, random selection procedures, or enrollment projections established by the school board.
- The number of spaces available, by grade.
- The number of applications received, by grade, the number approved, the number denied, the number granted guarantees or preferences, and the number selected randomly.
- Whether any nonresident pupils were permitted to enroll in the school district in the current school year who were not subject to the school board's space limitations, except those who were participating under the full-time open enrollment program, whose tuition was paid by another governmental entity or who attended under s. 121.84, Stats.
- Form PI 9422, Record of Decision in an Open Enrollment Denial Due to Space. See <http://dpi.wi.gov/files/forms/doc/f9422.doc>.

### *Expulsion – Nonresident School Board*

- A copy of the expulsion order or notice of pending disciplinary proceeding that includes the reason for the expulsion or pending disciplinary proceeding.
- Evidence that the school board reviewed the expulsion order or notice of pending disciplinary proceeding to determine whether the denial is permitted under Wis. Stats. § 118.51 (5) (a) 2. or pursuant to Wis. Stats. § 120.13 (1) (f), Stats.

### *Habitual Truancy – Denial of Application – Nonresident School Board*

- A copy of the school board's attendance policy.
- Attendance records for the pupil during the semester or semesters in which the pupil was habitually truant.

### *Habitual Truancy – Termination of Open Enrollment – Nonresident School Board*

- A copy of the school board's attendance policy.
- Attendance records for the pupil during the semester or semesters in which the pupil was habitually truant.
- Evidence that the pupil and parent were notified of the open enrollment consequences of habitual truancy, including the number of unexcused absences that may result in termination of the pupil's open enrollment.
- Copies of any notices the parent received concerning unexcused absences and the letter notifying the parent that the pupil was habitually truant.

### *Special Education Program or Space Are Not Available – Nonresident School Board*

- Criteria, data and procedures used to determine the number of spaces available in each special education program and related service for which a class size or caseload may be established and calculated.
- The number of spaces available in each special education program and related service required in the pupil's IEP.

- A description of the services required in the pupil's IEP and the portion of the IEP that prescribes the special education and related services to be provided.
- Evidence that the school board reviewed the pupil's IEP to determine whether a free, appropriate public education can be provided to the pupil within the nonresident school district.
- The date on which the IEP was created or revised, if the pupil is being required to return to the resident school district based on a new or revised IEP.

*Initial Special Education Evaluation Has Not Been Completed – Nonresident School District*

- Evidence that the pupil has been referred for an initial evaluation and that the initial evaluation has not been completed. If a pupil has been referred, but the parent refused consent for an evaluation or for initial placement, the pupil is not eligible for special education and may not be denied for this reason.

*Undue Financial Burden – Resident School Board*

- A copy of the cost estimate on Form PI 9423.
- A description of the services required in the pupil's IEP and the portion of the IEP that prescribes the special education and related services to be provided.
- Data and factors reviewed by the school board in considering the total economic circumstances of the school district, including the district's revenue limit, ability to pay the costs or the per pupil special education and related services costs for children with disabilities continuing to be served by the resident school district.
- Evidence that the school board considered the cost in light of its total economic circumstances prior to denying open enrollment.
- Form PI 9414, District Record of Decision in Appeal of Undue Financial Burden, with the record. See <http://dpi.wi.gov/files/forms/doc/f9414.doc>.